

SUPREME COURT OF THE UNITED STATES.

No. 106.—OCTOBER TERM, 1925.

Rhode Island Hospital Trust Com- pany, Executor of George Briggs, deceased, Plaintiff in Error, vs. Rufus A. Doughton, Commissioner of Revenue of the State of North Carolina.	}	Error to the Supreme Court of North Caro- lina.
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[March 1, 1926.]

Mr. Chief Justice TAFT delivered the opinion of the Court.

This is a writ of error to the Supreme Court of North Carolina in a consolidation of two causes, the first being an appeal to a Superior Court of the State by the plaintiff in error, the Rhode Island Hospital Trust Company, executor of George Briggs, from an inheritance tax assessment on the decedent's estate made by the Commissioner of Revenue of North Carolina, and the second being an action at law by the executor to recover the taxes paid by it on the assessment under protest. The Superior Court held that the inheritance taxes imposed by the Commissioner of Revenue of the State were lawful and that the executor was not entitled to recover them back as illegally collected. The Supreme Court of North Carolina affirmed this judgment. 187 N. C. 263.

The assignment of error of the executor is based on the invalidity under the Fourteenth Amendment of that part of the Revenue Act of 1919 of North Carolina, Public Laws, c. 90, section 6 and sub-section 7, which provides:

"Sec. 6. From and after the passage of this act all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State (or if the decedent was not a resident of this State at the time of his death, such property or

any part thereof within this State,) or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State."

"Seventh. The words 'such property or any part thereof or interest therein within this State' shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50 per cent or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemption allowed by this act, as related to the total value of the property of the decedent."

The seventh sub-section further provides:

"Any incorporated company not incorporated in this State and owning property in this State, which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value \$500, before the inheritance tax, if any, has been paid, shall become liable for the payment of the said tax, and any property held by such company in this State shall be subject to execution to satisfy the same. A receipt or waiver signed by the State Tax Commission of North Carolina shall be full protection for any such company in the transfer of any such stocks or bonds."

George Briggs was a resident of the State of Rhode Island, and domiciled therein at the time of his death. He never resided in North Carolina. He died testate October 29, 1919, leaving a large estate. The plaintiff, Rhode Island Hospital Trust Company, was appointed executor of Briggs' will, and qualified as such before the municipal court of the city of Providence, Rhode Island. Among other personal property passing to the executor under the will were shares of stock in the R. J. Reynolds Tobacco Company which with declared dividends unpaid were valued at \$115,634.50. The R. J. Reynolds Tobacco Company, hereinafter for brevity

called the Tobacco Company, is a corporation created under the laws of the State of New Jersey. Section 1181 of the Consolidated Statutes of North Carolina provides that every foreign corporation, before being permitted to do business in North Carolina, shall file in the office of the Secretary of State a copy of its charter, a statement of the amount of its capital stock, the amount actually issued, the principal office in North Carolina, the name of the agent in charge of the office, the character of the business which it transacts, and the name and post office addresses of its officers and directors. It is required to pay, for the use of the State, twenty cents for every one thousand dollars of its authorized capital stock, but in no case less than \$25, nor more than \$250. It may withdraw from the State upon paying a fee of five dollars, and filing in the office of the Secretary of State a statement of its wish to do so. In August, 1906, the Tobacco Company filed its application under the statute and complied with the requirements, and a certificate granting authority to it to do business in the State was issued. Two-thirds in value of its entire property is in North Carolina. Since 1906, it has regularly paid the license and franchise tax required, and is still doing business in the State.

Briggs' certificates of stock in the Tobacco Company, passing under his will to his executor, were, none of them, in the State of North Carolina at the time of his death, and never had been while they were owned by him. The Commissioner of Revenue of the State assessed an inheritance tax upon \$77,089.67, 66 $\frac{2}{3}$ per cent. of the total value of Briggs' stock, amounting to \$2,658.85. The plaintiff as executor applied to the office of the company in New Jersey to have this stock transferred to it as executor, in compliance with the will of Briggs. The company refused to do so, on the ground that under the law of North Carolina, already set forth, it would by such transfer before the executor paid the transfer tax subject itself to a penalty which could be exacted out of its property in that State. Thereupon the executor paid the tax under protest, and brought suit to recover it back.

The question here presented is whether North Carolina can validly impose a transfer or inheritance tax upon shares of stock owned by a non-resident in a business corporation of New Jersey, because the corporation does business and has two-thirds of its property within the limits of North Carolina. We think that the law of North Carolina, by which this is attempted is invalid. It goes without

saying that a state may not tax property which is not within its territorial jurisdiction. *State Tax on Foreign Held Bonds*, 15 Wall. 300; *Louisville Ferry Company v. Kentucky*, 188 U. S. 385; *Delaware Railroad v. Pennsylvania*, 198 U. S. 341; *Union Transit Company v. Kentucky*, 199 U. S. 194; *Metropolitan Life Insurance Company v. New York*, 205 U. S. 395, 399; *United States v. Bennett*, 232 U. S. 299, 306; *International Paper Company v. Massachusetts*, 246 U. S. 135, 142; *Frick v. Pennsylvania*, 268 U. S. 473, 488.

The tax here is not upon property, but upon the right of succession to property, but the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax. A state has no power to tax the devolution of the property of a non-resident unless it has jurisdiction of the property devolved or transferred. In the matter of intangibles, like choses in action, shares of stock and bonds, the situs of which is with the owner, a transfer tax of course may be properly levied by the state in which he resides. So, too, it is well established that the state in which a corporation is organized may provide in creating it for the taxation in that state of all its shares, whether owned by residents or non-residents. *Hawley v. Malden*, 232 U. S. 1, 12; *Hannis Distillery Co. v. Baltimore*, 216 U. S. 285, 293, 294; *Corry v. Baltimore*, 196 U. S. 466; *Tappan v. Bank*, 19 Wall. 490, 503.

In this case the jurisdiction of North Carolina rests on the claim that because the New Jersey corporation has two-thirds of its property in North Carolina, the State may treat shares of its stock as having a situs in North Carolina to the extent of the ratio in value of its property in North Carolina to all of its property. This is on the theory that the stockholder is the owner of the property of the corporation, and the state which has jurisdiction of any of the corporate property has *pro tanto* jurisdiction of his shares of stock. We can not concur in this view. The owner of the shares of stock in a company is not the owner of the corporation's property. He has a right to his share in the earnings of the corporation, as they may be declared in dividends, arising from the use of all its property. In the dissolution of the corporation he may take his ~~share~~ share in what is left, after all the debts of the corporation have been paid and the assets are divided in accordance with the law of its creation. But he does not own the corporate property.

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In *Van Allen v. Assessors*, 3 Wall. 573, 583, the question was whether shares of stock in a national bank could be subjected to state taxation if part or all of the capital of the bank was invested in securities of the National Government declared by the statute authorizing them to be exempt from taxation by state authority. It was held that they could be so taxed. Mr. Justice Nelson, speaking for this Court, said, at p. 583:

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law, and will be found in every work that may be opened on the subject of corporations. . . .

"The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him."

The same principle is declared in *Jellenik v. Huron Copper Company*, 177 U. S. 1, in which it was held that shares of stock in a corporation had a situs in the state creating the corporation so that they were there subject to mesne process. It is approved in *Farrington v. Tennessee*, 95 U. S. 679, 686; in *Hawley v. Malden*, *supra*, at p. 19; in *Eisner v. Macomber*, 252 U. S. 189, 208, 213, 214, and in *Des Moines Natl. Bank v. Fairweather Mayor*, 263 U. S. 103, 112.

In North Carolina and in some other States, the State constitution requires all property, real and personal, to be taxed equally. Laws have been passed exempting shares of stock in North Carolina corporations from taxation, on the ground that the property of the corporation is taxed which is held to be equivalent to taxing the shares. *Person v. Watts*, 184 N. C. 499; *Jones v. Davis*, 35 O. S. 474. But such cases grow out of state constitutional difficulties and are hardly applicable to questions of state jurisdiction of shares of foreign corporation stock. The cases of *Bronson's Estate*, 150 N. Y. 1, 8, and *In re Culver's Estate*, 145 Iowa 1, said to hold that a stockholder owns the property of the corporation, are really

authorities to the point that shares of stock in a corporation of a state have their situs for purposes of taxation in that state, as well as in the residence of the owner of the shares. But whatever the view of the other courts, that of this Court is clear, the stockholder does not own the corporate property. Jurisdiction for tax purposes over his shares can not, therefore, be made to rest on the situs of part of the corporate property within the taxing state. North Carolina can not control the devolution of New Jersey shares. That is determined by the laws of Rhode Island where the decedent owner lived or by those of New Jersey, because the shares have a situs in the state of incorporation. There is nothing in the statutory conditions on which the Tobacco Company began or continued business in North Carolina which suggests that its shareholders subjected their stock to the taxing jurisdiction of that State by the company's doing business there.

Our conclusion is in accord with the great majority of cases in the state courts where this exact question has arisen. *Welch v. Burrill*, 223 Mass. 87; *People v. Dennett*, 276 Ill. 43; *State v. Dunlap*, 28 Idaho 784; *State v. Walker*, 70 Montana 484; *In re Harkness Estate*, 83 Okla. 107. *Tyler v. Dane County*, 289 Fed. 843, contains a full and satisfactory discussion of the subject in a Wisconsin case which has been followed by the Supreme Court of Wisconsin in *Estate of Shepard*, 184 Wis. 88. See article by Professor Beale, 38 Harvard Law Review 291.

In an addendum to its opinion in this case, the Supreme Court of North Carolina suggests that the jurisdiction of the State to tax the shares of the New Jersey corporation may be based on the view that the corporation has been domesticated in North Carolina. So far as the statutes of the State show, it has been authorized to do and does business in the State and owns property therein and pays a fee for the permission to do so. It has not been re-incorporated in the State. It is still a foreign corporation and the rights of its stockholders are to be determined accordingly.

We conclude that the statute of North Carolina, above set out, in so far as it attempts to subject the shares of stock in the New Jersey corporation, held by a resident of Rhode Island, to a transfer tax deprives the executor of Briggs of his property without due process of law and is invalid.

Judgment reversed.